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PART II—Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 27th September, 1965/Asvina 5, 1887 (Saka)

The following President's Act is published for general information:—

THE KERALA SALES TAX (LEVY AND VALIDATION) ACT, 1965

No. 4 OF 1965

Enacted by the President in the Sixteenth Year of the Republic of India.

An Act to provide for the levy of a tax on the purchase of copra and cashewnut kernel and to validate the levy and collection of such tax.

12 of 1965. In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965, the President is pleased to enact as follows:—

1. (1) This Act may be called the Kerala Sales Tax (Levy and Validation) Act, 1965.

Short title, extent and commencement.

(2) It extends to the whole of the State of Kerala.

(3) Sections 2 and 3 shall be deemed to have come into force on the 1st day of April, 1958, and the remaining provisions of this Act shall come into force at once.

Interpre-
tation.

2. In this Act,—

(a) any reference to the General Sales Tax Act shall be construed as a reference to the General Sales Tax Act, 1125, as if that Act had not been repealed by the Kerala General Sales Tax Act, 1963;

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Act XI of
1125.

(b) all expressions used but not defined in this Act and defined in the General Sales Tax Act shall have the meanings respectively assigned to them in that Act.

Kerala Act
XV of 1963

Liability of
dealers for
tax on the
purchase of
copra and
cashewnut
kernel.

3. (1) Every dealer shall be liable to pay for each year during the period commencing on and from the 1st day of April, 1958, and ending with the 31st day of March, 1963, a tax on his turnover relating to the purchase of copra or cashewnut kernel for that year at the rate of four paise for every rupee in such turnover:

Provided that for the period commencing on and from the 1st day of October, 1958, and ending with the 31st day of March, 1963, such tax shall, with respect to the turnover relating to the purchase of copra, be two paise for every rupee in such turnover:

Provided further that no tax shall be levied under this section on copra or cashewnut kernel if a tax has already been levied on the purchase of coconut or cashewnut out of which such copra or cashewnut kernel is produced.

(2) Such tax shall be chargeable in respect of any year referred to in sub-section (1) at the point of last purchase in the State by a dealer who is not exempt from liability to pay such tax under sub-section (3).

(3) No dealer whose total turnover relating to all goods in any year during the period referred to in sub-section (1) is less than ten thousand rupees shall be liable to pay such tax for that year.

(4) The provisions of the General Sales Tax Act and all notifications, orders and rules issued or made thereunder shall apply in relation to the assessment and collection (including refund) of the tax levied under this section as they applied in relation to the assessment and collection (including refund) of any tax levied under that Act.

4. (1) Notwithstanding any judgment, decree or order of any court, tribunal or other authority, all taxes levied, assessed or collected or purported to have been levied, assessed or collected under the General Sales Tax Act during the period commencing on and from the 1st day of April, 1958, and ending with the 31st day of March, 1963, on the purchase of copra or cashewnut kernel shall be deemed to have been validly levied, assessed or collected in accordance with law; and accordingly—

Validation of levy and collection of tax under the General Sales Tax Act on copra and cashewnut kernel.

(i) no suit or other proceeding shall be maintained or continued in any court, tribunal or other authority for the refund of any such tax paid under the General Sales Tax Act;

(ii) no court shall enforce a decree or order directing the refund of any such tax paid under the General Sales Tax Act;

(iii) any such tax assessed under the General Sales Tax Act before the 1st day of April, 1963, but not collected, may be recovered in the manner provided under that Act and the rules made thereunder;

(iv) any such tax not assessed under the General Sales Tax Act before the 1st day of April, 1963, may be assessed within three years of the date of publication of this Act and recovered in the manner provided under the General Sales Tax Act and the rules made thereunder.

(2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person from claiming the refund of any amount paid by him in excess of the amount due from him by way of tax on the purchase of copra or cashewnut kernel under the General Sales Tax Act.

5. Nothing contained in this Act shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him before the date of publication of this Act if such act or omission would not be an offence under the General Sales Tax Act but for the provisions of this Act

Saving.

S. RADHAKRISHNAN,
President.

R. C. S. SARKAR,
Secy. to the Govt. of India.

Reasons for the enactment

The General Sales Tax Act, 1125, provided for the levy of sales tax at a single point on the sale or purchase of the articles specified in Schedule I of the Act and at every point of sale or purchase on other articles. The articles specified in the Schedule included "cashewnut including its kernel" and "coconut including copra". The High Court of Kerala in T.R.C. Nos. 60 and 69 of 1961 held that the words "cashewnut including its kernel" meant "cashewnut inclusive of its kernel" that is to say, the whole of the unshelled nut with the kernel inside it. According to this judgment, the whole of the unshelled nut with the kernel and not cashewnut kernel will fall under the single point scheme of levy. Similarly, in T.R.C. No. 58 of 1961, the High Court of Kerala held that "coconut including copra" meant "coconut with copra inside it" and will not take in copra alone. But the intention was that cashewnut kernel and copra should be taxable where cashewnut and coconut out of which such kernel and copra have been produced are not taxed. Accordingly, the General Sales Tax (Validation) Ordinance, 1964, was promulgated to validate the assessment, levy and collection of the sales tax on the purchase of cashewnut kernel and copra under the single point scheme of tax made under the Act before its repeal by the Kerala General Sales Tax Act, 1963. The Ordinance was replaced by the General Sales Tax (Validation) Act, 1964. The Kerala High Court in T.R.C. No. 15 of 1963 held that the above Validation Ordinance and Act did not effect any amendments as intended, for lack of a parent Act on which the amendments could operate. Since the tax collected may have to be refunded in case the levy is not validated and since the amount involved is large, it has become necessary to enact legislation to validate the levy and collection of tax on the purchase of copra and cashewnut kernel during the period commencing on and from the 1st day of April, 1958, and ending with the 31st day of March, 1963 (the date on which the Kerala General Sales Tax Act, 1963, which repealed the General Sales Tax Act, 1125 came into force).

2. This enactment is intended for the above purpose.

3. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965 (12 of 1965), has approved the enactment of this measure as a President's Act.

G. VENKATESWARA AYYAR,
Secretary to the Government of India,
Ministry of Finance.